

## Minutes

### Arkansas State Board of Optometry

#### Regular Board Meeting by Conference Call

April 23, 2020

Dr. Bryant Ashley, Board President, called the meeting to order at 1:30 p.m. with all Board members on the call except Dr. Herman Ginger. Others on the call were Dr. Howard Flippin, Board Executive Director, Ms. Bonita Wineman, Board assistant, Mr. Kevin O'Dwyer, Board attorney, Mr. Matt Gilmore, AR Department of Health, Ms. Vicki Farmer, ArOA Executive Director, Drs. Jeff Netzel, Justin Beavers, and Allison Hall, ArOA, Ms. Jerry Himes, AR Board of Opticians, and Lucas Hargraves, Hargraves Consulting.

Dr. Smalling presented the minutes of the February 13, 2020 Board meeting and the April 7, 2020 special called meeting by conference call.

Dr. Ford made a motion to approve both minutes as presented. Dr. Hennessey made a second.

The motion passed

Dr. Hennessey pointed that there were several items that had changes since the last meeting that were in the minutes. Dr. Ginger has decided not to resign. The Jurisprudence course scheduled for tomorrow was cancelled. The ARBO annual meeting scheduled for June in Virginia has been cancelled.

Dr. Flippin had mailed out a written accounting update report. There were no unusual entries and no questions from the Board.

Dr. Hennessey made a motion to accept the financial report. Dr. Ford made a second.

The motion passed.

Under further old business, Dr. Smalling reported on his assignment to check with other states in relation to genetic testing. He attended the ARBO regional meeting in Atlanta last month and most states at the meeting had no formal posture on this issue. Florida, on the other hand was quite vehement on supporting testing for genetic linkage of zinc and macular degeneration nutrition recommendations. An optometric owned supplement company was in the exhibit hall and the OD owner was quite adamant on the necessity for genetic testing.

He reported that genetic testing results can and should be limited to eye issues only. Mr. O'Dwyer reported that genetic counselors are licensed under the Medical Board, and, in his opinion, OD's should not do genetic testing. He reported that there very few genetic counselors licensed in Arkansas.

Dr. Smalling move to table this issue until next meeting and more information. Dr. Hennessey made a second. The motion passed.

Mr. O'Dwyer reported that the public hearing had been scheduled for today at the Attorney General's office. He reported that he had placed signs on the elevator doors of the AG's office giving information on how to participate in this conference call. He then opened the public hearing with a report on precicensure criminal background checks. He reported that the Governor's office and Department of Health had approved the rule change. This change is pursuant to Act 990 of 2019. All Boards are enacting similar language changes. Nobody spoke for or against the rule change and the hearing was closed.

Mr. White made a motion to amend Board regulations to accept criminal background checks prior to licensure.

Dr. Hennessey made a second. The motion passed on a roll call vote.

Mr. O'Dwyer opened the public hearing again and presented the proposed amendment to Reciprocity, Licensure by Endorsement chapter of the Board regulations dealing with Military Personnel. The Governor's office and the Department of Health had approved the rule. He then led a public hearing on the proposed amendment. No one spoke for or against the measure. This amendment has been in the Medical Board rules for five years with no incidents of usage. The hearing was closed.

Mr. Gentry made a motion to amend the Board regulations in relation to licensure by endorsement of military personnel. Dr. Ford made a second. The motion passed on a roll call vote.

Prior to the public hearing, Ms. Vicki Farmer reported that she had not found either rule changes in the Secretary of State or the Arkansas State Board of Optometry websites. Mr. O'Dwyer reported that the Secretary of State had agreed to publish the rule changes notice in the appropriate time frame. The Board staff reported that they normally publish the rules after they are passed by the Board. Mr. O'Dwyer instructed the Board office to notify Ms. Farmer of future changes and to publish proposed rule changes on the Board website.

Mr. O'Dwyer presented a discussion on the Arkansas Freedom of Information Act. He stated that any communication between two Board members constitutes a Board meeting and is open to FOI. All communication by phone or email is to go through the Board office or the Board Attorney's office.

Dr. Ashley led a discussion of the Continuing Education Requirements for this year with the cancellation of many meetings. Dr. Smalling reported on the COPE change to allow scheduled meetings to go online and still report as a "live" meeting. This is allowed until June 30 at this time. Since re-licensure does not happen until January 2021, the board agreed to postpone further consideration until the June Board meeting.

Dr. Ashley led a discussion on the Board exam scheduled for June 18, 2020. Many optometric colleges have announced that fourth year students will graduate. NBEO reports that the clinical testing in Charlotte is closed. Many new graduates will not have completed all their NBEO requirements prior to graduation. The Oklahoma Board is allowing 2020 graduates to take the Board exam and a year to complete NBEO testing after they are licensed.

Dr. Hennessey made a motion to allow 2020 graduates to take the Board exam and allow them one year to complete NBEO testing. Dr. Ford made a second. The motion passed

Dr. Ashley asked Drs. Hennessey and Ford to report on Telemedicine/Teleoptometry. They reported that most states had similar rules as Arkansas. During the pandemic, the Governor and Department of Health have relaxed regulations on telemedicine. No face-to-face or prior record requirements are needed. Dr. Ford had investigated various platforms and protocols that are being promoted by various companies. There is a question about in-state or out-of-state doctors. Medical Board requires all to be licensed in Arkansas if see Arkansans. Dr. Ford and Hennessey requested that this issue be tabled and discussed further at June Board meeting. Board agreed by common consent.

Dr. Ashley reported that the Board office is not allowed to receive information on routine Medicaid exams. The Board was looking for an avenue to locate licensees who were still performing routine eye exams.

Dr. Ashley announced that our contract for a Board attorney expires June 30, 2020. We can renew the current contract or begin advertising for a new attorney. Mr. O'Dwyer was excused from the call while the discussion was ongoing. Mr. Gilmore reported that the Department of Health had no plans to provide legal services for any boards and commissions. He reported that the Attorney General has to sign off on this contract annually.

Mr. White made a motion to renew Mr. O'Dwyer's contract as Board attorney. Dr. Hennessey made a second. The motion passed.

Dr. Ashley stated that Dr. Flippin and Ms. Wineman are retiring in September, and the Board office is moving to Little Rock. The Board can suggest a replacement for the Executive Director, but the Governor will appoint. The Board will hire the Board assistant. Both will be employees of the Department of Health. The ED position will be full time, requiring daily attendance to the Board office. Any suggestion should be brought to the June Board meeting. Mr. Gilmore reported that there is a freeze on hiring and offered to provide manpower to assist the functioning of the Board, if there is a lapse in filling the positions.

Dr. Ashley reported that he had spoken, at length, with Dr. Naveen Patil of the Governor's Taskforce on reopening the state economy. Dr. Ashley provided guidelines for requirements to reopen Optometry offices to the Taskforce. Dr. Hennessey reported that the ArOA has developed guidelines that will be sent out to their members very soon. Dr. Ashley reported the guidelines are very similar to Alabama and Ohio documents. Board guidelines will be created and will be forwarded to licensees with the State Directive to reopen practice.

The next Board meeting is scheduled for June 18, 2020 with testing at 8:00 am and Board meeting in the afternoon. Remaining meeting for 2020 are August 13, October 8, and November 19. Jurisprudence course is October 16 (Rogers). The ARBO annual meeting tentatively scheduled for June 21-23, 2020 has been cancelled.

Mr. White made a motion to adjourn. Mr. Gentry made a second. The motion passed.

The meeting adjourned at 3:26 p.m.

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Dr. Bryant Ashley, President

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Dr. Robert W. Smalling, Secretary/Treasurer